

BEFORE THE UNITED STATE UNCLEAR REGULATORY COMMISSION
EXECUTIVE DIRECTOR OF OPERATIONS

IN THE MATTER OF:)	STATE OF UTAH
)	2.206 PETITION
PRIVATE FUEL STORAGE, LLC)	
Part 72 License Submittal)	
)	

On June 25, 1997 Private Fuel Storage, LLC (PFS) filed an application with the Nuclear Regulatory Commission (NRC) to construct and operate an independent fuel storage installation (ISFSI) on the Skull Valley Band of Goshute Indian Reservation. An Emergency Plan was part of PFS's application submittal. The State of Utah requests the NRC to reject the application outright because the applicant has failed to submit the Emergency Plan to offsite emergency response organizations and give them 60 days to comment on the Emergency Plan **prior to** submittal of the license application. 10 CFR § 72.32(a)(14).

This petition is filed by the Executive Director, Department of Environmental Quality, in behalf of the State of Utah pursuant to 10 CFR § 2.206(a) which states, in relevant part:

Any person may file a request to institute a proceeding pursuant to § 2.202 to modify, suspend, or revoke a license, **or for such other action as may be proper** (*emphasis added*).

The Commission, under 10 CFR § 2.202(a), "may institute a proceeding to modify, suspend or revoke a license or to **take such other action as may be proper**" by serving an order on a person subject to the jurisdiction of the Commission. By submitting an ISFSI license application, PFS is subject to the Commission's jurisdiction.

BASIS FOR THE REQUEST:

A. Regulatory Requirements

The PFS ISFSI license application is subject to review under 10 CFR Part 72. Emergency planning requirements for ISFSIs are contained in 10 CFR § 72.32. In Section 9.2 of its Emergency Plan, PFS states that it has satisfied the requirement of 10 CFR § 72.32(a)(14) by allowing "the Tooele County, Utah, Department of Emergency Management" 60 days in which to comment on the plan.

Section 72.32(a)(14) reads, in relevant part:

The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the initial submittal of the licensee's emergency plan before submitting it to NRC.... The licensee shall provide any comments received within the 60 days to the NRC with the emergency plan.

B. PFS Emergency Plan: Offsite Assistance, Support and Resources

Chapter 10 of PFS's Emergency Plan states that it will use Tooele County and Tooele City law enforcement, medical and fire services, if needed. PFS specifically lists Tooele Valley Medical Center, Tooele County Fire Department and Tooele County Sheriff as offsite response organizations it may call upon for assistance. According to information obtained by the State, Tooele Valley Medical Center has not seen or reviewed the PFS Emergency Plan. Exh. 1 Nor has Tooele City police seen or reviewed the Emergency Plan. Exh. 2.

For other offsite assistance PFS merely recites that "[c]ontracted services and other available resources are listed in the emergency telephone directory." No emergency telephone directory is included as part of the Emergency Plan.

C. Emergency Response: Utah State Agencies

Not one agency of the State of Utah has been notified by PFS about its Emergency Plan. While the Governor of Utah has openly and aggressively opposed the PFS application, that fact is no justification for PFS ignoring its legal responsibilities of communicating with State emergency response organizations.

There is no excuse for PFS not forwarding a copy of its plan to the Utah Division of Radiation Control. The Division of

Radiation Control, an Agreement state with the NRC, regulates all sources of radiation in the State, and employs personnel who have training and experience in responding to radiation incidents. Utah Code Ann. Title 19, Chapter 3. In addition, William Sinclair, Director, Division of Radiation Control, is the Governor's designee for notification of all shipments of high level nuclear waste coming through the State. Exh. 3.

The other obvious State agency that PFS should have notified is the Division of Comprehensive Emergency Management -- the entity responsible for coordination and allocation of state emergency services. Utah Code Ann. Title 53, Chapter 2.

There are numerous State entities that may need to assist in the case of an accident associated with the PFS high level nuclear waste storage facility. The State of Utah has an "Emergency Operations Plan" which, to the degree possible, reflects the normal day-to-day operations of State agencies. Annex C of the plan, Functional Responsibility Assignments (Exh. 4), shows the specific emergency response assignments among State agencies. From Annex C it can be seen that at a minimum the following State agencies ¹ must be allowed 60 days to comment on the PFS Emergency Plan:

- ▶ Office of the Governor
(emergency public information)
- ▶ Department of Health
(emergency medical and health)
- ▶ Department of Public Safety
(public safety and security)
(hazardous materials response)
- ▶ Division of Comprehensive Emergency Management (CEM)
(emergency communications, planning and coordination)
- ▶ Department of Environmental Quality
(fixed site hazardous materials response)
(drinking water and sanitation)
(air and water quality)
- ▶ State Fire Marshal
(search and rescue)
(fire fighting--urban)
- ▶ Department of Natural Resources, State Forester
(fire fighting--rural)
- ▶ Department of Transportation
(emergency transportation and highway traffic regulation)

¹Examples of response functions for each entity are given in parenthesis.

D. Emergency Response: Federal agencies

In addition to State emergency personnel, there are federal land managers and military commanders whom PFS may need to call upon for assistance. The Bureau of Land Management (BLM), U.S. Forest Service, and Dugway Proving Ground operate and control much of the land surrounding the Indian reservation and they too should have had the opportunity to comment on PFS's Emergency Plan.

E. Wildfires

The potential for wildfires in Skull Valley is real and illustrates the need to involve resources other than those controlled by PFS and Tooele County. In the past ten years 48 fires in Skull Valley have been reported to the Utah Division of Forestry. Twenty-four of those fires were caused by lightning and ranged in size from 0.1 to 7,100 acres (average 373 acres). These reports are limited to fires on state or private lands and do not include fires on federal, military or reservation lands because in Skull Valley BLM protects its own lands, Forest Service lands and the Goshute reservation lands; fires on Dugway Proving Grounds are controlled by the military. Exh 5.

The initial fire fighting attack forces are volunteer fire departments located at Tooele, Vernon, Stockton, Rush Valley, Wendover, Grantsville, Stansbury Park and Terra.² The BLM has initial attack resources stationed at Vernon and occasionally at Muskrat Springs in the north end of Skull Valley. Dugway has a military fire department that may assist. Extended attack forces usually involve resources from the Utah Division of Forestry, BLM and the Forest Service. Exh. 5.

F. Preamble to 10 CFR 72.32 final rule

PFS is proposing a storage facility for up to 4,000 casks of high level nuclear waste. The magnitude of the project itself warrants contact with more than a single local organization. By ignoring state, federal, and other local officials, PFS has not met the plain requirements of rule or the direction of the Commission.

In the preamble to the final rule for Emergency Planning Licensing Requirements for ISFSIs, 10 CFR 72.32, published in the

²PFS did not submit its Emergency Plan to Terra for its review and comment. Exh. 6.

Federal Register on June 16, 1995 (1995 WL 509710(NRC)), the Commission clearly stated that offsite emergency response organizations must be given an opportunity to be involved in the development of emergency plans for ISFSIs.

Issue 31 in the preamble addressed public comments in opposition to the 60 day advance notification to offsite emergency organizations. The commentors stated there would be sufficient time to review the emergency plan as part of the application review by all parties. The commentors further noted that the 60 day advanced review would be unnecessary because licensees experienced in operating nuclear power plants recognize the benefits of working with offsite groups. In its response the Commission disagreed stating: "The Commission believes that requiring participation by offsite organizations in the development of the emergency plan significantly helps establish coordination and working relationships between the principals." Id. WL at *13. The Commission made a similar point in its response to Issue 21. Id. WL at *11.

ACTION REQUESTED:

The NRC staff has received explicit direction from the Commission that offsite emergency organizations must be given 60 days to review and comment on a Part 72 Emergency Plan. The Commission is on record that it does not support a concurrent review of the Emergency Plan with the license application.

The State of Utah requests that the NRC return the entire license application submittal to PFS until it has complied with 10 CFR 73.32(a)(14). PFS must submit a copy of its Emergency Plan to the State of Utah and give its emergency response agencies an opportunity to comment on the plan. PFS must also give a similar opportunity to other local response organizations and to the BLM and Dugway Proving Ground to comment on its emergency plan. Such comments must be incorporated into any Emergency Plan that PFS submits to the NRC as part of its Part 72 license application.

DATED this _____ day of _____, 1997

Respectfully submitted,

STATE OF UTAH BY AND THROUGH THE
UTAH DEPARTMENT OF ENVIRONMENTAL

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CERTIFICATE OF MAILING

This is to certify that the original of this 2.206 petition was mailed, Federal Express, to:

Executive Director for Operations,
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and that copies of this petition were mailed, first class postage prepaid to the following:

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DATED this _____ day of _____, 1997.
